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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 227

INLAND STEEL COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND INDIANA HARBOR BELT RAILROAD COMPANY

No. 228

CHICAGO BY-PRODUCT COKE COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, THE BELT RAILWAY COMPANY OF CHICAGO, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED JULY 28, 1938.

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[fols.1-3] [Caption omitted]

[fol. 4]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 14738

INLAND STEEL COMPANY

vs.

UNITED STATES OF AMERICA, INDIANA HARBOR BELT RAILROAD COMPANY

PETITION—Filed August 5, 1935

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

Your petitioner, Inland Steel Company, a corporation, presents this its petition against United States of America and Indiana Harbor Belt Railroad Company; and thereupon petitioner respectfully states:

I

Petitioner is a corporation duly organized and existing under the laws of the State of Delaware, with principal office and principal operating office at Chicago, in the State of Illinois and Northern District of Illinois, Eastern Division, and owning and operating a plant at Indiana Harbor, Indiana, where it is now and for many years past has been engaged in the manufacture of steel and steel products; and in the conduct of said business it receives at its plant large quantities of raw commodities and other materials, and ships large quantities of manufactured steel and other products from said plant.

[fol. 5] II

Respondent Indiana Harbor Belt Railroad Company is a corporation under the laws of Indiana, with principal

operating office at Chicago, Illinois. It is a common carrier of property, by railroad, between Chicago, Illinois, Indiana Harbor, Indiana, and points in other states, and as such common carrier is subject to the Interstate Commerce Act, and owns and operates lines of railroad within said States of Indiana and Illinois. Said defendant transports interstate freight for delivery to petitioner's plant at Indiana Harbor, Indiana, and in like manner transports freight from said plaint moving to destinations in other states.

III

Petitioner brings this suit in equity against the United States of America pursuant to an Act of Congress approved October 22, 1913, 38 statutes at large 219 (28 U. S. C. A. Sec. 41, subsections 45, 46, 47), and under the general equity jurisdiction of this Court, to enjoin, set aside and annul a certain report and order entered by the Interstate Commerce Commission on July 11, 1935, in a proceeding known as Ex Parte 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, said report and order being subtitled Nineteenth Supplemental Report of the Commission, Inland Steel Company Terminal Allowance; and to enjoin and restrain the respondent carrier from complying with the aforesaid order of the Commission entered July 11, 1935.

[fol. 6] IV

The said Commission, on its own motion, entered an order under date of July 6, 1931, without any complaint having been made to or petition filed with said Commission, according to petitioner's information and belief, which said order was in words and figures as follows:

"Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 6th day of July, A. D. 1931.

Ex Parte No. 104

Practices of Carriers Affecting Operating Revenues or Expenses

Sections 12 and 15 (a) of the interstate commerce act being under consideration, and the commission desiring to

know whether certain practices of carriers by railroad subject to the act will affect operating revenues or expenses are lawful and consistent with economical and efficient management, and to have full and complete information necessary to perform its duties; all with a view to making such order or orders or findings of fact as may be appropriate under the interstate commerce act:

It is ordered, That the commission on its own motion and without formal pleading, enter upon a proceeding of inquiry and investigation into and concerning practices of carriers by railroad subject to the interstate commerce act which affect operating revenues or expenses;

It is further ordered; That copies of this order be served upon all common carriers by railroad subject to the interstate commerce act; and that such carriers be made respondents to this proceeding;

And it is further ordered, That this proceeding be assigned for hearing at such times and places and with respect [fol. 7] to such practices as the commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)"

Petitioner presumes that aforesaid order was served upon all so-called class I carriers by railroad subject to the Act, and therefore avers that said order was served upon each of the carriers respondents thereto, including Indiana Harbor Belt Railroad Company.

Subsequently, the Commission issued its notice under date of August 13, 1931, entitled: "Ex Parte No. 104, Part II, Terminal Services of Class I Carriers. Notice of Information to be sought at hearings." In said notice, the Commission ostensibly defined "in scope and restriction" said Part II of the aforesaid general inquiry as intended to establish facts concerning various services, charges and practices of carriers subject to the Act, including among others, terminal services and practices in the receipt and delivery of carload freight, including the spotting of cars, and all services and privileges, except transit and lighterage, incident to said terminal services within the meaning of Section 6 of the Interstate Commerce Act, which affect the measure of the transportation service performed at the line-haul rates and the value of such services to the consignors and consignees; the extent to which the line-haul rates include

charges for such services; allowances and absorptions made out of the line-haul rates; and the extent to which such services reach beyond the carriers' terminals to particular locations on private tracks, sidings, industrial plant tracks, and on the rails of industrial common carriers.

The Commission conducted extended hearings in said proceeding at numerous places, at various times from Septem- [fol. 8] ber 15, 1931, to November 21, 1932; thereafter a "proposed report" was prepared by the Commission's Director of Service, W. P. Bartel, before whom the hearings had been held; exceptions were filed by numerous parties; and oral argument before the Commission was had. Thereafter the Commission issued its report, dated May 14, 1935, without order (which report has subsequently been described by the Commission as its original report, and is hereinafter so referred to), in which it reviewed the subject matter of the inquiry generally and set forth its legal conclusions.

A copy of said original report of the Commission is attached hereto, marked Appendix A, and is made a part hereof as fully as though set forth at length herein.

On said 14th day of May, 1935, and thereafter on various dates, the Commission issued various so-called supplemental reports in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services. Among other such supplemental reports, the Commission entered on July 11, 1935, its Nineteenth Supplemental Report entitled Inland Steel Company Terminal Allowance.

A true copy of said Nineteenth Supplemental Report, together with the order attached thereto and entered on the same date, is attached to this petition, marked Appendix B, and is made a part hereof as fully as though set forth at length herein.

On July 19, 1935, petitioner filed with the Commission its petition for vacation of said order of July 11, 1935, or for postponement of the effective date thereof. This was denied or overruled by the Commission on July 26, 1935.

[fol. 9] V

The uniform custom and practice of all common carriers, in the States of Illinois and Indiana, and in other states throughout the Union, including the carrier named

as respondent in this bill, is to state in their rate tariffs published and filed with the Commission the city, town or other station locality to and from which they undertake to transport freight at the rates and charges in such tariffs stated, without stating the precise spot in such city, town or station locality at which they undertake to receive or deliver such freight. Under such tariffs it is and for many years has been the uniform custom and practice to include within the carload freight rates established and maintained for the transportation of carload freight the complete service comprehended in (a) the providing and furnishing of a suitable car for transportation and the placement of the car at any point reasonably accessible and convenient for loading on standard gauge tracks serving any and all industrial plants; and after the freight has been loaded in said cars by consignor, to remove the same and transport the goods therein to destination; and (b) to deliver the carload freight by placing the car, wherein such freight is transported, at any point reasonably convenient for the unloading and removal of the freight from the car on the standard gauge tracks serving any and all industrial plants and to remove the empty car therefrom after the freight has been received and unloaded by the consignee. It is customary for railroads for various reasons sometimes to employ other railroad companies to complete their undertaking to spot the cars as aforesaid, and to pay such other railroads for such service, and sometimes to employ [fol. 10] the shipper or receiver of freight to complete said undertaking to spot the cars as aforesaid and in such cases to compensate by payments termed allowances to such shippers and receivers of freight for such service. Respondent carrier has followed generally such custom in serving shippers and receivers of freight over its lines of road.

Pursuant to such custom, respondent Indiana Harbor Belt Railroad Company has always provided in its tariffs that, for the compensation afforded by its established rates for transportation between designated cities, towns or other station localities, it would deliver and receive carload freight by the placement of the cars at any reasonable and convenient point for the loading or unloading thereof on the tracks serving the said plant of petitioner at Indiana Harbor, Indiana, the same as at all plants, industries and business establishments adjacent to its railroad and served by so-called private or industrial sidings.